

17 November 2014

Joint Regional Planning Panel

GPO Box 39

SYDNEY NSW 2001

via email: ruth.paton@planning.nsw.gov.au

Attention: Mr Gary West

Chair, Northern Joint Regional Planning Panel

Dear Sir,

Submission to the Northern Joint Regional Planning Panel

Proposed Construction of a Tomato Farm in Two Stages

4 x 5 Hectare Glasshouses and Ancillary Buildings for the Growing, Packing and Distribution of Tomatoes, 4774 New England Highway, Falconer NSW 2365

2014NTH007 – DA 47-2014

Thank you for the opportunity to provide a response to the Joint Regional Planning Panel in relation to the abovementioned development application. This submission has been prepared after review of the assessment report and proposed conditions of development consent dated 5 November 2014, prepared by Mr Chris Pratt on behalf of Guyra Shire Council.

This submission outlines potential alternatives to certain proposed conditions of development consent in order to enable the construction of the development in an efficient and timely manner and ensure that all requirements satisfy the Newbury test.

- **Proposed Modification Number 1:**

Condition Number 5

This condition requires that the applicant comply with the Category 1 fire safety provisions of the Building Code of Australia.

Proposed Amendment

It is requested that this condition be removed from the proposed conditions of consent.

Justification Supporting the Amendment

The Category 1 fire safety provisions stipulate the minimum fire safety requirements for an existing building that cannot be fully upgraded in order to comply with the Building Code of Australia. As the proposed development involves the construction of new buildings it will be assessed in accordance with the Building Code of Australia, complying with condition 6 and Clause 98 of the *Environmental Planning and Assessment Regulation 2000*. The inclusion of this condition is repetitive and irrelevant.

- **Proposed Modification Number 2:**

Heading:

'The following conditions are to be complied with prior to the issue of any construction certificate for the greenhouse foundations in stage 1 of the development'.

Proposed Amendment:

'The following conditions are to be complied with prior to the issue of any Construction Certificate for the foundations in stage 1 of the development'.

Justification Supporting the Amendment

The proposed deletion of the word 'greenhouse' in this heading will allow the developer to commence the construction of the foundations of all buildings, as opposed to simply the foundations for the glasshouse buildings. It is considered that the environmental impact resulting from this change will be insignificant, and that if for any reason the development does not proceed, these works can be rectified. The ability to commence all foundation works will ensure that the development can be constructed in an efficient and cost effective manner.

- **Proposed Modification Number 3:**

Condition Number 8

This condition requires that all lot boundary adjustments and / or easements necessary to enable the establishment and ongoing operation of the tomato farm are created on respective titles prior to the issue of any Construction Certificate.

Proposed Amendment

It is requested that this condition be re-located so that compliance is required to be achieved prior to the issue of an Occupation Certificate.

Justification Supporting the Amendment

The reasons for this amendment are as follows:

- Agreement has been reached with all relevant landowners to provide for access from Lot 2 DP 119363 to the New England Highway and easements for both the sewer and water supplies. The relocation of this requirement to prior to the issue of an Occupation Certificate will allow registration of boundary adjustments and / or easements with NSW Land & Property Information during construction works, a process which can take considerable time.
- Although the land titles over which the easements will run have been identified, detailed surveys and designs are yet to be finalised by the developer. The modification will allow for certainty by ensuring that the developer has sufficient time to finalise those surveys and designs, thus ensuring that easements for infrastructure will be placed in the most suitable locations on the identified land titles.

- The intent of this condition will always be satisfied, as legal access to the allotment is available via the section of Crown Road reserve to the south of the subject land connecting the allotment with the New England Highway (which has been approved for purchase by the developer). Although an alteration to the proposed access arrangements is not anticipated, if any unforeseen circumstances arise the developer will be able to achieve legal and physical access to the development via the lodgement of a modification application pursuant to Section 96 of the *Environmental Planning and Assessment Act 1979*.

It is noted that:

- the Stormwater Management Strategy prepared by Kelley Covey Group Pty Ltd does not require any stormwater catchment drains to be located outside the boundary of Lot 2 DP 1196363, and that all road widening along the New England Highway to establish adequate access to the property will be within the defined road reserve. Nevertheless, these requirements could remain, to be satisfied prior to the issue of an Occupation Certificate, in order to accommodate a change in circumstances; and
- the section of Crown Road reserve to the south of the subject land connecting the allotment with the New England Highway has been approved for closure. The plans have been drawn and a lot and DP issued – the Crown land will become Lot 1 DP1203138.

If this condition is re-located so that compliance is required to be achieved prior to the issue of an Occupation Certificate, then certainty can still be provided prior to issue of any Construction Certificate for the foundations in stage 1 of the development in order to satisfy the intent (being the finalisation of all boundary adjustments and / or easements that will enable the development to operate as contemplated), as follows:

- A legal agreement is to be signed between the owner of Lot 2 DP 1196363 and the landowner/s directly affected by the proposed access route from the New England Highway to Lot 2 DP 1196363, in order to ensure that legal and practical access is able to be arranged in the location approved by the development consent;
- A legal agreement is to be signed between the owner of Lot 2 DP 1196363 and the private landowner/s directly affected by the proposed sewer and water infrastructure from Council's system to Lot 2 DP 1196363, in order to ensure that suitable easements can be registered to accommodate the development;
- The section of Crown Road reserve to the south of the subject land connecting the allotment with the New England Highway must be approved for closure and the owner of Lot 2 DP 119363 must give a written undertaking to apply for consolidation of that section of Crown road reserve with Lot 2 DP 119363.

- **Proposed Modification Number 4:**

Condition Number 12

This condition requires that the applicant obtain consent from Council for a Traffic Management Plan pursuant to Section 138 of the *Roads Act 1993* prior to the issue of any Construction Certificate for the foundations in stage 1 of the development.

Proposed Amendment

It is requested that the first sentence of this condition be deleted in order to remove the requirement for a Section 138 approval, and simply require a suitable Traffic Management Plan to be in place prior to the issue of any Construction Certificate for the foundations in stage 1 of the development.

Justification Supporting the Amendment

Section 138 of the *Roads Act 1993* requires consent be obtained to carry out work in a public road or to connect a road to a classified road. The foundation work associated with the proposed development will not involve any work on the New England Highway, and a Section 138 approval is therefore not required at this stage. Nevertheless, it is acknowledged that a suitable Traffic Management Plan should be in place and as such, all matters detailed in the second sentence onwards remain relevant. It is also noted that condition 17 requires the developer to obtain a Section 138 approval for all construction work on Council road reserves.

A Works Authorisation Deed (WAD) was previously issued by the RMS for the temporary access point off the New England Highway.

- **Proposed Modification Number 5:**

Condition Number 14(e)

This sub-condition states that *Construction works not to unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible on adjoining residential premises, can only occur Monday to Saturday, from 7am to 6pm. No construction work is to take place on Sundays or Public Holidays.*

Proposed Amendment

It is requested that this condition be amended in order to allow for work that will not be audible from adjoining residential premises to be undertaken on Sundays and public holidays.

- **Proposed Modification Number 6:**

Condition Number 17

This condition currently reads:

For all construction work required on Council road reserves (e.g. vehicular footpath crossings, utilities and stormwater work, footpath paving, kerb and gutter etc.), the Applicant is to submit an Application to Council as the roads authority pursuant to Section 138 of the Roads Act 1993 and obtain approvals for all such proposed work.

Proposed Amendment

It is requested that this condition be amended so that it reads:

For all construction work required on Council road reserves (e.g. vehicular footpath crossings, utilities and stormwater work, footpath paving, kerb and gutter etc.), the Applicant is to submit an Application to Council as the roads authority pursuant to Section 138 of the Roads Act 1993 and obtain approvals for all such proposed work, *prior to the issue of the relevant Construction Certificate for the works required by this condition.*

Justification Supporting the Amendment

The proposed addition of the words indicated in italics above will allow for the issue of a number of Construction Certificates for the proposal, relating to specific components of the development. In this regard, it is considered reasonable that the Section 138 approval be assessed concurrently to the construction of the buildings approved by the consent.

- **Proposed Modification Number 7:**

Condition Number 20

This condition currently reads:

The application for a Construction Certificate is to include plans and specification[s] that indicate access, parking and manoeuvring details in accordance with the plans approved by this consent...

Proposed Amendment

It is requested that this condition be amended so that it reads:

The application for *the relevant Construction Certificate for the works required by this condition* is to include plans and specifications that indicate access, parking and manoeuvring details in accordance with the plans approved by this consent...

Justification Supporting the Amendment

The inclusion of the words indicated in italics above will allow a specific Construction Certificate to be issued for the access, parking and manoeuvring areas that will facilitate the development. As significant design is required so that these components comply with relevant specifications, it is considered reasonable that this design be completed concurrently to the construction of the buildings approved by the consent. Adequate site area exists to comply with applicable requirements and the intent of the condition will be satisfied as the information will be finalised for assessment by the Certifying Authority with an application for a Construction Certificate for those works.

- **Proposed Modification Number 8:**

Condition Number 21

This condition currently reads:

The application for a Construction Certificate is to include plans and specifications that indicate the landscaping of the site...

Proposed Amendment

It is requested that this condition be amended so that it reads:

The application for *the relevant* Construction Certificate *for the works required by this condition* is to include plans and specifications that indicate the landscaping of the site...

Justification Supporting the Amendment

As with condition 20, the inclusion of the words indicated in italics above will allow a specific Construction Certificate to be issued for the landscaping works. The intent of the condition will be satisfied as the information will be finalised for assessment by the Certifying Authority with an application for a Construction Certificate for those works.

- **Proposed Modification Number 9:**

Condition Number 22

This condition relates to the preparation of an Operational Management Plan for approval by Council, and is currently required to be satisfied prior to issue of a Construction Certificate for the remainder of Stage 1 of the development.

Proposed Amendment

It is requested that this condition be relocated so that it is required to be satisfied prior to issue of an Occupation Certificate for the development.

Justification Supporting the Amendment

This condition relates to the ongoing operation of the proposed development and requires that a Plan be prepared by the developer in order to manage and address any potential impacts. As the Plan will relate to the constructed development it is considered appropriate that it be finalised once the developer is ready to proceed with operations. Furthermore, many of the matters listed for inclusion in the Operational Management Plan will not be fully known until the development has been constructed.

- **Proposed Modification Number 10:**

Condition Number 22(e)

This sub-condition restricts the hours of operation to between 7am and 6pm Monday to Saturday.

Proposed Amendment

It is requested that this sub-condition be amended so that it is recognised that the majority of staff will arrive for work between 6am and 7am, as outlined within the submitted Statement of Environmental Effects. Although there may be no audible noise on adjoining residential properties by these vehicle movements, the developer would appreciate the assurance that this traffic generation will not contravene the development consent.

- **Proposed Modification Number 11:**

Condition Number 32

The fourth paragraph in this condition states that: *'Where the northern end of any works related to north bound traffic movements occur within 100 metres of Crystalbrook Road, the design must include the reconstruction of the intersection of Crystalbrook Road and the New England Highway to provide an Austroads sealed left turn (BAL) treatment for northbound traffic in accordance with Austroads Guide to Road Design Part 4A'*.

Proposed Amendment

It is requested that this section of the condition be removed.

Justification Supporting the Amendment

Extensive consultation with the RMS was undertaken prior to and during the assessment of the subject development application by the applicant as well as Council in order to ensure that the concept design for the intersection of the entry to the development site with the New England Highway is safe for all users. In this regard, the RMS considered the proposed development pursuant to the *State Environmental Planning Policy (Infrastructure) 2007* and assessed the proximity of the entry to the development site with the intersection of Crystalbrook Road and the New England Highway. The proposed access point to the subject land was endorsed by the RMS as it does not pose any impact on the Crystalbrook Road intersection. To address road safety and ensure the ongoing operation of the New England Highway, suitable upgrades have been imposed by the RMS on the developer (listed in the first section of condition number 32).

It is considered that this condition fails the Newbury test as the upgrade to the intersection of Crystalbrook Road and the New England Highway does not fairly and reasonably relate to the proposed development (there will be no traffic associated with the proposed development that will utilise Crystalbrook Road). For this reason, it is requested that the requirement to upgrade the intersection of Crystalbrook Road and the New England Highway be deleted from the recommended conditions of development consent.

- **Proposed Modification Number 12:**

Condition Number 38

This condition provides any resident of a dwelling house within 2km of the boundary of the tomato farm (9 residents in total) to engage a noise consultant at the proponent's cost if they do not believe that the farm is operating in accordance with approved noise limits. The proponent is not required to meet the cost of the independent noise consultant if the resident has previously engaged the consultant on three (3) occasions when it has been found that the farm is operating in accordance with approved noise limits.

Proposed Amendment

Noise from the operation of the development is not to exceed the more stringent of the two following criteria when measured from the property boundary of Lot 2 DP 1196363:

1. Intrusiveness Criteria – noise from the operation of the activity (measured as an $L_{Aeq(15min)}$) must not exceed the background noise level (measured as an $L_{A90(15min)}$) at the nearest affected receptor by more than $5_{dB(A)}$; or
2. Amenity Criteria – noise from the operation of the activity (measured as an $L_{Aeq(15min)}$) must not exceed:
 - $50_{dB(A)}$ during the daytime (7am to 6pm Monday to Saturday, or 8am to 6pm on Sundays or public holidays);
 - $45_{dB(A)}$ during evening (6pm to 10pm);
 - $40_{dB(A)}$ during the night (the remaining periods).

Justification Supporting the Amendment

The proposed condition outlined above is considered more appropriate as it establishes suitable noise criteria for the subject site. If a resident believes that the facility is operating outside the bounds of this condition, consultation with the Council or EPA can be commenced and the matter investigated via compliance monitoring. This will eliminate monitoring being undertaken without suitable justification.

Conclusion

The suggested amendments to the proposed conditions of development consent will ensure that the developer is able to commence construction in a timely manner and conduct ongoing operations in such a way that satisfies the intent of Council's requirements.

Kindest regards,



Greg M. Hill – Architect

For

Kate Campbell – Town Planning Manager
Sixhills Group